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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

CHASOM BROWN, *et al.*, individually and  
on behalf of themselves and all others  
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,  
Defendant.

Case No. 4:20-cv-03664-YGR-SVK

**DEFENDANT GOOGLE LLC'S  
ADMINISTRATIVE MOTION TO SEAL  
THE COURTROOM FOR MARCH 2, 2023  
HEARING**

Referral: Hon. Susan van Keulen, USMJ  
Hearing Date: March 2, 2023  
Hearing Time: 10:00 A.M.

## 1 I. INTRODUCTION

2 Material designated Confidential or Highly Confidential-Attorneys' Eyes Only under the  
 3 Protective Order (Dkt. 81), including information already filed under redaction, will be discussed at  
 4 the March 2, 2023 hearing (the "Hearing"). Plaintiffs have proposed the parties and the Court create  
 5 a list of codenames to mask the substance of the Hearing, but, given the subject matter of the Hearing  
 6 and the volume of confidential material that will necessarily be discussed, this suggestion is  
 7 unworkable and would likely lead to confusion. For the reasons discussed below, Google requests  
 8 the Hearing be sealed.

9 Following the October 27, 2022 Status Conference, the Court's Order to Show Cause  
 10 ("OSC") asks Google to explain why previously undisclosed logs ("June Logs") do not "contain  
 11 relevant data that should have been identified and produced during discovery" and why Google  
 12 should not be sanctioned for not discovering and disclosing them earlier. October 27, 2022 Order  
 13 for Google to Show Cause re Additional Discovery Sanctions, Dkt. 784. Google submitted its  
 14 Response to the Court's OSC (Dkt. 798) on November 30, 2022, which Google filed under seal  
 15 (Dkt. 797). Plaintiffs submitted their Response to the Court's OSC on January 20, 2023 (Dkt. 834)  
 16 and Google filed its Reply on February 10, 2023 (Dkt. 858). All of these filings contain information  
 17 sought to be redacted from the public docket pursuant to the Protective Order in this case. *See* Dkts.  
 18 797, 843, 857. Moreover, this Court has previously granted Google's motion to seal the courtroom  
 19 on substantively the same or similar issues in this case and the related *Calhoun* case. *See Calhoun*  
 20 Dkt. 826 (Order sealing the August 11, 2022 Hearing on Plaintiffs' Motion for an Order of Sanctions  
 21 for Google's Discovery Misconduct); *see also* Dkt. 821 (Order Granting Google's Administrative  
 22 Motion to Seal the Courtroom for January 10, 2023 Hearing), Dkt. 860 (Order Granting Google's  
 23 Administrative Motion to Seal the Courtroom for February 14, 2023 Hearing).

24 In order to address the Court's question and Plaintiffs' accusations, Google will need to  
 25 speak freely regarding the substance of the filings, including the information that has been redacted  
 26 from the public docket. These discussions will contain Google's confidential and proprietary  
 27 information regarding highly sensitive features of Google's internal systems and operations that  
 28 Google does not share publicly, including Google's internal projects, data structures and fields at

1 issue, such as particular logs, locations, identifiers, source code, and their proprietary functionalities.  
 2 This information is at the heart of the Hearing.

3 Therefore, Google now moves the Court to seal the courtroom for the March 2, 2023 hearing.  
 4 In light of the highly confidential material to be discussed at the March 2, 2023 hearing, Google  
 5 asked Plaintiffs if they opposed Google’s request. Spilly Decl., ¶ 3. Plaintiffs stated they oppose the  
 6 request and noted that, if reference to sealed material was required, the parties could use codenames.  
 7 *Id.* Plaintiffs’ request to keep the hearing open and instead negotiate a list of “codenames” is  
 8 unworkable and insufficient to protect Google’s confidential material. The Hearing will necessitate  
 9 not only references to isolated confidential words or phrases, but also detailed discussion of highly  
 10 confidential Google projects and processes (including the function of the fields at issue and  
 11 processes by which Google ensures authenticated and unauthenticated data remain segregated),  
 12 including references to Google’s highly confidential and proprietary source code, that cannot be  
 13 replaced by codenames. A fulsome discussion of these processes is possible only in a sealed  
 14 proceeding.

15 To the extent the Court believes particular issues may be discussed publicly without  
 16 discussion of Google’s confidential information, Google requests such issues be taken up first,  
 17 followed by sealed discussion of remaining matters that will necessarily entail disclosure of  
 18 Google’s confidential information.

## 19 **II. LEGAL STANDARD**

20 The common law right of public access to judicial proceedings is not a constitutional right  
 21 and it is “not absolute.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978); *Crowe v. Cty.*  
 22 *of San Diego*, 210 F. Supp. 2d 1189, 1194 (S.D. Cal. 2002) (“[T]here is no right of access which  
 23 attaches to all judicial proceedings.” (internal citations omitted)). The right is weakest where, as  
 24 here, the proceedings concern a non-dispositive discovery motion; rather than satisfy the more  
 25 stringent “compelling reasons” standard, a party seeking to seal materials in these circumstances  
 26 must make only a “particularized showing” of “good cause.” *Kamakana v. City & County of*  
 27 *Honolulu*, 447 F.3d 1172, 1178–80 (9th Cir. 2006). Such sealing at trial is appropriate when the  
 28 information at issue constitutes “competitively sensitive information,” such as “confidential

research, development, or commercial information.” *France Telecom S.A. v. Marvell Semiconductor Inc.*, 2014 WL 4965995, at \*4 (N.D. Cal. Oct. 3, 2014); *see also Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002) (acknowledging courts’ “broad latitude” to “prevent disclosure of materials for many types of information, including, but not limited to, trade secrets or other confidential research, development, or commercial information”); *Standard & Poor’s Corp. Inc. v. Commodity Exch., Inc.*, 541 F. Supp. 1273, 1275 (S.D.N.Y. 1982) (“[T]he overriding interest to be found in business confidences . . . require[s] . . . temporary reasonably restricted access to the Courtroom of members of the public.”).

### III. THE HEARING SHOULD BE SEALED BECAUSE THE PARTIES’ ARGUMENTS WILL NECESSARILY INVOLVE DISCLOSURE OF GOOGLE’S HIGHLY SENSITIVE MATERIAL

All facts weigh in favor of sealing the March 2, 2023 hearing. Both the “good cause” standard that governs the sealing determination in non-dispositive motions and the higher “compelling reasons” standard are easily met. The parties’ briefing contains detailed discussions on Google’s confidential information, including the highly sensitive features of Google’s systems and operations. *See* Dkts. 798, 834, 858. As explained in the Administrative Motions and supporting papers seeking redaction of these filings, the information sought to be sealed for this hearing reveals Google’s internal strategies, system designs, and business practices for operating and maintaining data related to many of its important services while complying with its legal and privacy obligations. *See* Dkts. 797, 843, 857. Such information is protectable and must be kept confidential in order to prevent harm to Google’s competitive standing. *Id.* Moreover, public disclosure of Google’s confidential information may put Google at an increased risk of cybersecurity threats. *Id.*

This hearing, similar to the August 11, 2022 *Calhoun* Hearing and the January 10, 2023 and February 14, 2023 hearings, is likely to focus on the details of particular data Google is storing. It will necessarily entail detailed discussion of the information Google has sought to redact from the public record in the underlying briefing, such as the existence, application, and contents of particular data sources and source code, specific identifiers contained in the data, and the import (or non-import) of particular fields. Finding sufficient codenames to refer to each of these topics or otherwise avoiding discussion of these specifics is infeasible, given their integral relationship to the

1 subject matter of the hearing. Permitting the parties to refer to the material at issue using the correct  
2 terminology would also improve the quality of the argument and reduce the potential for confusion.

3 Plaintiffs' proposal to hold a fully open hearing and negotiate a list of "codenames" to use  
4 in place of confidential information—is unlikely to succeed, is insufficient to protect the sensitive  
5 information at issue, and would seriously impede the parties and the Court in the argument of a  
6 complicated motion. The Court held an unsealed hearing on Plaintiffs' prior sanctions motion on  
7 April 21, 2022. *See* Dkt. 568. Exactly as Plaintiffs propose here, Google and the Plaintiffs negotiated  
8 a set of "codenames" to prevent the publication of Google's sensitive information. Despite the  
9 parties' diligent efforts, however, Google's confidential information was still disclosed publicly at  
10 that hearing. As a result, Google had to move to seal the transcript of those proceedings, Dkt. 616,  
11 but not before its confidential material was irrevocably exposed in a public setting. The Court  
12 ordered the subsequent sanctions hearing in *Calhoun* sealed. *Calhoun* Dkt. 826. Because the subject  
13 matter of the Hearing involves comparable issues relating to Google's sensitive internal projects,  
14 processes, and data sources—and further involves Google's highly confidential source code—  
15 inadvertent release of Google's confidential information is as or more likely to occur here.

16 Additionally, sealing the courtroom for the Hearing would not deprive the public of access  
17 to these proceedings. Google shares Plaintiffs' commitment to an open and transparent legal system,  
18 and will ensure that a redacted copy of the hearing transcript is filed on the public docket shortly  
19 after that transcript becomes available. As always, Google will seek to redact only the minimum  
20 amount of material necessary to protect its sensitive information, thereby providing the public with  
21 timely access to the proceedings.

22 Given the importance and highly sensitive nature of the aforementioned information related  
23 to the parties' disputes, Google believes that sealing the courtroom is the correct and most effective  
24 approach. To the extent the Court believes particular issues may be discussed publicly without  
25 discussion of Google's confidential information, Google requests that the courtroom be sealed for  
26 the portions of the discussion the Court agrees require sealing.

#### 27 **IV. CONCLUSION**

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1 For the foregoing reasons, Google respectfully requests that the Court seal the March 2, 2023  
2 hearing.

3 DATED: February 28, 2023

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5 By /s/ Andrew H. Schapiro

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